



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

MAYO et al.

Atty. Ref.: 3691-368

Serial No. 10/083,637

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Filed: February 27, 2002

Examiner: Laneau, Ronald

For: METHOD OF REPLACING VEHICLE WINDOWS IN VIEW OF

WARRANTY CLAIMS

* * * * *

June 29, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

The Office Action dated March 5, 2007 (in response to the Appeal Brief filed November 28, 2006) withdrew the previous ground of rejection and reopened prosecution. In response to the March 5, 2007 Office Action, Applicant hereby initiates a new appeal by filing a Notice of Appeal and the instant Appeal Brief. The Notice of Appeal and Appeal Brief fees previously paid have been applied hereto. Thus, applicant appeals the rejections set forth in the Office Action dated March 5, 2007.

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(I) REAL PARTY IN INTEREST

The real party in interest is Guardian Industries Corp., a corporation of the country of the United States of America.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1-12 are pending and have been rejected. No claims have been substantively allowed. Claims 1-12 are on appeal.

(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the Office Action dated March 5, 2007.

(V) SUMMARY OF INVENTION

For purposes of example only and without limitation, certain example embodiments of this invention relate to a method of handling vehicle window warranty claims such a vehicle windshield warranty claims. This section is for purposes of example only and without limitation as to the claims.

(a) Background

Vehicles (e.g., cars, trucks, sport utility vehicles, etc.) commercially sold typically have a manufacturer warranty which covers certain damage to windows of the vehicle. An example warranty may last for 3 years and/or 36,000 miles in certain instances (e.g., ¶ 0002). However, manufacturer warranties do not cover all types of window damage. For example, according to certain example manufacturer warranties, stress or strain fractures in a vehicle windshield with no obvious point of object impact are legitimate warranty claims intended to be covered by the manufacturer warranty. This is because stress or strain fractures in a vehicle window (e.g., windshield) are often caused by improper window installation by the vehicle manufacturer on the vehicle assembly line (example vehicle manufacturers include Daimler-Chrysler, Ford, General Motors, Audi, Volkswagen, BMW, and the like) (e.g., ¶ 0003). Another example window problem/issue intended to be covered by the manufacturer warranty is the presence of significant air bubble(s) (e.g., in a vehicle windshield). However, other types of vehicle window damage such as impact damage (e.g., damage caused by a rock/stone hitting a vehicle windshield during vehicle operation) are not intended to be covered by the manufacturer warranty (e.g., ¶ 0004). Instead, such other types of damage (e.g., impact

damage) are the responsibility of the vehicle owner and/or operator, and not the vehicle manufacturer. Unfortunately, the way that vehicle window warranty claims are conventionally handled results in the vehicle manufacturer being billed for many damaged windows that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0005).

Figure 1 of the instant application is a flow chart illustrating how vehicle window warranty claims are typically handled. The customer (e.g., vehicle owner and/or operator) first discovers a glass issue with a window(s) (see step A in Fig. 1), such as stress or strain fractures with no obvious point of impact, the presence of air bubbles in the window, and/or damage due to the impact of a rock or the like (e.g., ¶ 0006). The customer then visits a vehicle dealer, where the dealer writes up a warranty claim based on the glass issue (see step B in Fig. 1). Unfortunately, vehicle dealers typically do not have glass experts or technicians on hand to determine the cause of the glass issue. Therefore, in step B of Fig. 1, no root cause of the glass issue is established (e.g., ¶ 0007). In other words, the vehicle dealer often does not attempt to (or cannot) differentiate between the different types of damage discussed above (e.g., ¶ 0007). Unfortunately, this means that many types of glass issues (e.g., impact damage) not intended to be covered by the manufacturer warranty are nonetheless ultimately paid for by the vehicle manufacturer (e.g., ¶ 0007).

Still referring to Fig. 1, after the dealer writes up the warranty claim, a new window is needed. Typically, the vehicle manufacturer or one of its divisions (e.g., MOPAR, which is Daimler-Chrysler's Service Parts Division) orders replacement windows from a window supplier (e.g., Guardian Industries, PPG, Sekurit, Asahi, or

Pilkington) (step C in Fig. 1) (e.g., ¶ 0008). Vehicle manufactures typically keep on hand a large inventory of replacement windows for its vehicles. The dealer subcontracts its services to the vehicle manufacturer (e.g., Daimler-Chrysler) (step D in Fig. 1), and is paid for the same by the vehicle manufacturer (e.g., ¶ 0008). Glass retailers typically perform the actual replacing of the vehicle window; the glass retailer orders the replacement window from the vehicle manufacturer (step E in Fig. 1), and when in receipt of the same replaces the damaged window with the new window on the customer's vehicle (step F in Fig. 1). After being billed by the retailer, the dealer submits the warranty claim to the vehicle manufacturer (step G in Fig. 1), and the vehicle manufacturer pays the dealer accordingly (e.g., ¶ 0009). The vehicle with the replacement window therein is returned to the customer (step H in Fig. 1).

Unfortunately, it can be seen that in the methodology of Fig. 1, the vehicle manufacturer often ends up paying for vehicle window warranty claims that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0010). This is largely because there is no system in place for determining the true cause of the window damage (or issue) and proceeding accordingly. Those skilled in the art will appreciate that there exists a need in the art for an improved method or technique for handling vehicle window warranty claims, and replacing windows accordingly, in a manner such that the vehicle manufacturer does not end up paying for so many window claims that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0011).

(b) Summary of Example Embodiments of Claimed Invention

Claim 1 relates to a method of handling vehicle window warranty claims such a vehicle windshield warranty claims. (e.g., ¶¶ 12-14). According to the method, a customer takes a vehicle having window damage to a retailer (e.g., ¶ 21; *claim 1* @ line 3; see step 2 in Fig. 2). A glass expert and/or technician at the retailer visually analyzes the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window (e.g., ¶ 22; *claim 1* @ lines 4-8; see steps 3, 4, 12 and 14 in Fig. 2).

Still referring to *claim 1*, when (a) or (b) is determined, then a manufacturer warranty claim is processed for the customer, the claim relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert and/or technician determines (a) or (b) (e.g., ¶ 24-26; *claim 1* @ lines 9-12; see steps 5, 13 in Fig. 2). Thus, the window can be replaced under the warranty. However, the customer is informed that the damage is not covered by the manufacturer warranty when the glass expert and/or technician determines (c) (e.g., ¶ 27; *claim 1* @ lines 13-14; see steps 14, 15 in Fig. 2). In such a situation, the vehicle manufacturer need not be charged for the damage.

The retailer replaces the window in instances of each of (a), (b) and (c), but the retailer orders a replacement window from a different source depending on whether the glass expert and/or technician determines (a) or (c).

In certain example embodiments, the method includes the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c) (e.g., see claims 2 and 4). In certain embodiments, the method includes a retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c) (e.g., see claim 5).

Claim 8 relates to a method handling warranty claims relating to vehicle windows (e.g., ¶¶ 12-14), the method comprising: a customer taking a vehicle having window damage to a retailer (e.g., ¶¶ 17, 21); at least one glass expert and/or technician at the retailer visually analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage (e.g., ¶¶ 17, 22; see steps 3, 4, 12 and 14 in Fig. 2); the retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician, the listing differentiating between windows damaged as a result of (a), (b), or (c) (e.g., ¶¶ 17, 27; see step 11 in Fig. 2).

Claim 12 relates to method handling warranty claims relating to vehicle windows (e.g., ¶¶ 12-14), the method comprising: visually analyzing window damage of a vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that

supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage (e.g., ¶¶ 17, 22; see steps 3, 4, 12 and 14 in Fig. 2); and providing the vehicle manufacturer a listing of vehicles analyzed, the listing differentiating between windows damaged as a result of (a), (b), or (c) (e.g., ¶¶ 17, 27; see step 11 in Fig. 2).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-4 are unpatentable under 35 U.S.C. Section 103(a) over Mahoney (US 2002/0128876) in view of Lowell (US 2002/0073012).
2. Whether claims 5-12 are unpatentable under 35 U.S.C. Section 103(a) over Mahoney in view of Lowell, and further in view of Busche (US 6,493,723).
3. Whether claims 1-12 are unpatentable under 35 U.S.C. Section 101.

(VII) ARGUMENT

A. Art Rejections Under Section(s) 102/103

It is axiomatic that in order for a reference to anticipate a claim, it must disclose, teach or suggest each and every feature recited in the claim. See, e.g., Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). The USPTO has the burden in this respect.

Moreover, the USPTO has the burden under 35 U.S.C. Section 103 of establishing a *prima facie* case of obviousness. In re Piasecki, 745, F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). It can satisfy this burden only by showing that some objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art, would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Before the USPTO may combine the disclosures of the references in order to establish a *prima facie* case of obviousness, there must be some suggestion for doing so. In re Jones, 958 F.2d 347 (Fed. Cir. 1992). Even assuming, *arguendo*, that a given combination of references is proper, the combination of references must in any event disclose the features of the claimed invention in order to render it obvious.

B. Whether claims 1-4 are unpatentable under §103(a) over Mahoney in view of Lowell

Claim 1

Claim 1 stands rejected under 35 U.S.C. Section 103(a) as being allegedly unpatentable over Mahoney in view of Lowell. This Section 103(a) rejection should be reversed for at least the following reasons.

Claim 1 requires "analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window"; when (a) or (b), processing a manufacturer warranty claim from the customer relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert and/or technician determines (a) or (b), so that the window can be replaced under the warranty; and informing the customer that the damage is not covered by the manufacturer warranty when . . . (c)."

Thus, it can be seen that claim 1 requires differentiating between (a), (b) and (c) at the retailer, and then adapting a different subsequent process based on which was determined. The cited art fails to disclose or suggest this.

Mahoney simply discloses a computer-networked system for handling warranty claims such as engine rattling, vehicle shaking, dents, and so forth. There is absolutely nothing in Mahoney which discloses or suggests differentiating between types of window damage (a), (b) and (c) at the retailer regarding vehicle windows, and then adapting a

different subsequent process according to which was determined as required by claim 1.

Mahoney is entirely unrelated to the invention of claim 1 in these respects. There is no suggestion or motivation in the cited art for the invention of claim 1 in these respects.

There cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 1.

Moreover, citation to Lowell cannot cure the aforesaid fundamental flaws in Mahoney. Lowell also fails to disclose or suggest the aforesaid features of claim 1. In particular, Lowell (like Mahoney) fails to disclose or suggest differentiating between types of window damage (a), (b) and (c) at the retailer regarding vehicle windows, and then adapting a different subsequent process according to which was determined as required by claim 1. Lowell (like Mahoney) is entirely unrelated to the invention of claim 1 in these respects. There is no suggestion or motivation in the cited art, or anywhere else, for the invention of claim 1 in these respects. Paragraphs [0026] and [0050] of Lowell, cited by the Examiner, are entirely unrelated to the aforesaid features of claim 1. For instance, there is nothing in these portions of Lowell which discloses or suggests differentiating between types of window damage (a), (b) and (c) at the retailer regarding vehicle windows, and then adapting a different subsequent process according to which was determined as required by claim 1. There cannot possibly be any *prima facie* case of obviousness in this respect, since the two cited references are entirely silent on key aspects of the invention of claim 1.

Claim 2

Claim 2 requires that "the retailer replacing the window in instances of each of (a), (b) and (c), but the retailer ordering a replacement window from a different source when

the glass expert and/or technician determines (a) as opposed to (c)." The cited art discloses nothing akin to these requirements of claim 2. There is no suggestion or motivation in Mahoney or Lowell for these features of claim 2. Again, there cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 2.

Claim 3

Claim 3 requires "the retailer replacing the window in instances of each of (a) and (b), but a different billing and/or paying procedure being carried out depending upon whether the glass expert and/or technician determines (a) or (b)." The cited art discloses nothing akin to these requirements of claim 3. There is no suggestion or motivation in Mahoney, Lowell, or anywhere else for these features of claim 3. Again, there cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 3.

Claim 4

Claim 4 requires "the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c)." The cited art fails to disclose or suggest these requirements of claim 4. There is no suggestion or motivation in Mahoney, Lowell, or anywhere else for these features of claim 4. Again, there cannot be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 4.

C. Whether claims 5-12 are unpatentable under §103(a) over Mahoney in view of Lowell and Busche

Claim 5

Claims 5-12 stand rejected under Section 103(a) as being allegedly unpatentable over Mahoney in view of Lowell, and further in view of Busche. This Section 103(a) rejection should be reversed for at least the following reasons.

Claim 5 requires "the retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c)." Again, the cited art fails to disclose or suggest anything like this. There is nothing in either Mahoney, Lowell or Busche which discloses or suggests periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c). There is no suggestion or motivation in Mahoney, Lowell or Busche (or anywhere else) for these features of claim 5. Again, the Section 103(a) rejection of claim 5 lacks merit.

Claim 8

Claim 8 requires "making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage; the retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician, the listing differentiating between windows damaged as a result of (a), (b), or (c)." Again, as explained above with respect

to Mahoney and Lowell, Mahoney and Lowell each fail to disclose or suggest these aspects of claim 8.

The cited art (all three cited references) fails to disclose or suggest making any determination as to whether window damage is a result of activity by (a), (b) or (c) as required by claim 8. The cited art is entirely silent in this respect. Furthermore, the art fails to disclose or suggest a retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician where the listing differentiates between windows damaged as a result of (a), (b), or (c) as called for in the claim. Nothing in either cited reference discloses or suggests any of the above aspects of claim 8.

Claim 12

Claim 12 requires "making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage; and providing the vehicle manufacturer a listing of vehicles analyzed, the listing differentiating between windows damaged as a result of (a), (b), or (c)."

The cited art, including all cited references, fails to disclose or suggest making any determination as to whether window damage is a result of activity by (a), (b) or (c) as required by claim 12. The cited art is entirely silent in this respect. Moreover, the cited art also fails to disclose or suggest (in all cited reference) providing a vehicle manufacturer a listing of vehicles analyzed where the listing differentiates between windows damaged as a result of (a), (b), or (c). The cited art is entirely unrelated to

claim 12 in each of these respects, and clearly fails to disclose or suggest the invention thereof.

D. Whether claims 1-12 are unpatentable under §101 as being directed toward non-statutory subject matter

Claims 1-12 stand rejected under 35 U.S.C. Section 101, as allegedly being directed to non-statutory subject matter. This Section 101 rejection is incorrect and should be reversed for at least the following reasons.

In rejecting all claims under 35 U.S.C. § 101, the Final Rejection relied on the now-defunct “not-in-the-technological-arts” test and alleged that the claimed subject matter was not eligible for patenting. Specifically, the Examiner argued: “For a claimed invention to be statutory, the claim must be within the technological arts.”

In *Ex Parte Lundgren*, Appeal No. 2003-2088 (Sept. 2005), the BPAI removed any ambiguity in the law and unequivocally held that “there is currently no judicially recognized separate ‘technological arts’ test to determine patent eligible subject matter under § 101.” *Lundgren*, slip op. at 9. Thus, the Examiner’s rejection under § 101 is founded on a legally erroneous premise that has been held to be non-applicable. *See also Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility* at 42-45 (“Interim Guidelines”), at

http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/guidelines101_20051026.pdf.

Indeed, the *Interim Guidelines* (issued October 26, 2005) make clear that the mere fact that the claims do not recite a computer (that is, that the claims can be performed by a human) does not bring the subject matter outside what is eligible for patenting. The

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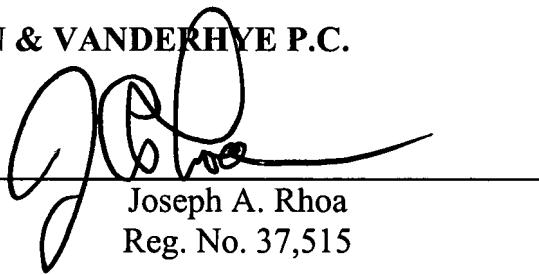
Interim Guidelines explain that claims are not directed to non-statutory processes merely because **some or all** of the steps therein can also be carried out in or with the aid of a human or because it may be necessary for one performing the processes to do some or all of the process steps.” *Interim Guidelines* at 47 (emphasis original). Because the claimed subject matter relates to a method that produces a “useful, concrete and tangible result” and is not an abstract idea, law of nature, or natural phenomenon, the claimed subject matter is eligible for patenting. *See Diamond v. Diehr*, 450 U.S. 175, 185-88 (1981); *State Street Bank & Trust Co. v. Signature Fin. Group Inc.*, 149 F.3d 1368, 1373-74 (Fed. Cir. 1998). The Section 101 rejection is incorrect and should be withdrawn.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. A method of handling vehicle window warranty claims, the method comprising:

 a customer taking a vehicle having window damage to a retailer;

 a glass expert and/or technician at the retailer visually analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window;

 when (a) or (b), processing a manufacturer warranty claim from the customer relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert and/or technician determines (a) or (b), so that the window can be replaced under the warranty; and

 informing the customer that the damage is not covered by the manufacturer warranty when the glass expert and/or technician determines (c).

2. The method of claim 1, further comprising:

 the retailer replacing the window in instances of each of (a), (b) and (c), but the retailer ordering a replacement window from a different source when the glass expert and/or technician determines (a) as opposed to (c).

3. The method of claim 1, further comprising:

the retailer replacing the window in instances of each of (a) and (b), but a different billing and/or paying procedure being carried out depending upon whether the glass expert and/or technician determines (a) or (b).

4. The method of claim 1, further comprising:

the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c).

5. The method of claim 1, further comprising the retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c).

6. The method of claim 1, further comprising the retailer providing the vehicle manufacturer a listing of warranty claim attempts differentiated by at least (a), (b), and (c).

7. The method of claim 1, further comprising the vehicle manufacturer storing warranty claims in a manner so as to differentiate between claims where the glass expert and/or technician determined (a) and claims where the glass expert and/or technician determined (b).

8. A method handling warranty claims relating to vehicle windows, the method comprising:

a customer taking a vehicle having window damage to a retailer; at least one glass expert and/or technician at the retailer visually analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage;

the retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician, the listing differentiating between windows damaged as a result of (a), (b), or (c).

9. The method of claim 8, further comprising the vehicle manufacturer storing warranty claims in a manner so as to differentiate between claims where the glass expert and/or technician determined (a) and claims where the glass expert and/or technician determined (b).

10. The method of claim 8, further comprising the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window

supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c).

11. The method of claim 8, further comprising the retailer replacing the customer's damaged window with a replacement window.

12. A method handling warranty claims relating to vehicle windows, the method comprising:

visually analyzing window damage of a vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage; and

providing the vehicle manufacturer a listing of vehicles analyzed, the listing differentiating between windows damaged as a result of (a), (b), or (c).

(IX) EVIDENCE APPENDIX

None

(X) RELATED PROCEEDINGS APPENDIX

None